With these speeches which I most respectfully agree, I am of the opinion that I should for the same reasons give leave in this case for the applicants to apply for certiorari subject to the orders and directions I have given.

There only remains the question of stay. Having regard to my decision that there is an arguable case as to whether the issues raised by the applicants are justiciable issues in the courts, I am of the view that the *status quo* must remain. The application for stay is refused.

The costs will be costs in the cause.

Order accordingly.

Solicitors: *Murphy & Dunbar.*

LIM KIM LIAN v. SWEE ENG HENG & ANOR.

[O.C.J. (Chao Hick Tin J.C.) October 16 & 17 and November 17, 1987]

[Singapore – Originating Summons No. 1009 of 1987]

Land Law – Conveyancing – Agreement of sale and purchase – Property affected by road plans – Whether requisition unsatisfactory – Whether can rescind agreement – Clause in option given the plain interpretation.

The defendants, in consideration of a payment of $3,450, made an offer by way of an option to sell to the plaintiff or his nominee the property in question. The offer was duly accepted by the plaintiff by the payment of 10% of the purchase price less $3,450.

One of the terms of the option was as follows: "8. The sale and purchase herein shall be subject to your solicitors receiving satisfactory replies to their legal requisitions and applications for interpretation plans to various government departments and Mass Rapid Transit Corporation and if any of such replies and/or interpretation plans are found to be unsatisfactory or if the above property is affected or may be affected by the Mass Rapid Transit system or any roadline or any road or drainage proposal or government acquisition or scheme or intended government acquisition or scheme then this Agreement may be rescinded at your option and in such event, I/we shall forthwith refund to you all monies paid by you to me/us or my/our solicitors but without any interest compensation or deductions whatsoever and thereupon neither party shall then have any claim or demand against the other for costs damages compensation or otherwise ..."

Through requisitions made, the solicitors for the plaintiff discovered that the property was affected by a roadline. The area that was affected by the roadline was 29.6 sq metres, *i.e.* almost 14% of the whole area.

The plaintiff, in the exercise of the right under clause 8 of the option, rescinded the agreement to purchase and asked for a refund of the 10% deposit. The defendants denied that the plaintiff was entitled to rescind and sought to forfeit the deposit.

The question before the court was whether, based on these facts, the plaintiff was entitled to rescind the agreement and have a refund of the 10% deposit.

Held: (1) the present property was affected by a roadline to the extent of 14%. That by no stretch of imagination could be considered to be inconsequential. The plaintiff would not have obtained what he wanted if 14% of the total land area would sometime in the future be taken away from him for road-widening purposes. Therefore the reply and/or interpretation plan was not satisfactory. The plaintiff was entitled to rescind;

(2) alternatively, the plain meaning of the second part of clause 8 should be applied. The court should give effect to the intention of the parties as expressed in the option and not rewrite it. Thus, on the alternative ground, the plaintiff was entitled to rescind the agreement.

Cases referred to:

(1) *Tatlien Hardware Pte. Ltd.* v. *Tan & Lie & Anor.* [1982] 1 M.L.J. 9.
(2) *Teo Hong Choo* v. *Chin Kiang Industries Pte. Ltd.* [1983] 2 M.L.J. 309.
(3) *Peh Kwee Yong* v. *Sinar Co. (Pte.) Ltd.* [1984] 2 M.L.J. 260.
(4) *Chu Yik Man* v. *S. Rajagopal & Co. & Anor.* [1987] 2 M.L.J. 557.
(5) *Re Meredith, ex parte Chick* (1879) 11 Ch.D. 731.

ORIGINATING SUMMONS.

V.K. Rajah for the plaintiff.
Lee Mun Hooi for the defendants.

Cur. Adv. Vult.

Chao Hick Tin J.C.: The plaintiff instituted this originating summons pursuant to section 4 of the Conveyancing and Law of Property Act (Cap. 61) for a declaration that the agreement for sale and purchase, constituted by the option dated July 10, 1987 whereby the defendants offered to sell the property known as No. 85 Jalan Gembira, Singapore 1336, and the acceptance of the offer by the plaintiff on July 23, 1987, was lawfully rescinded by the plaintiff in accordance with the terms of the option on the ground that the property in question was affected by a roadline. The plaintiff also asked for an order that the defendants be required to return the 10% deposit. At the conclusion of the hearing of the summons, I made the orders prayed for and I now give my reasons.

The undisputed facts of the case are these. On July 10, 1987, the defendants, in consideration

of a payment of $3,450, made an offer by way of an option to sell to the plaintiff or his nominee the property, which is a corner terrace house, for a sum of dollars three hundred and forty-five thousand ($345,000). The offer was duly accepted by the plaintiff by the payment of 10% of the purchase price, less the sum of $3,450 already paid for the option, to the defendants' solicitors as stakeholders.

One of the terms of the option was as follows:

"8. The sale and purchase herein shall be subject to your solicitors receiving satisfactory replies to their legal requisitions and applications for interpretation plans to various government departments and Mass Rapid Transit Corporation and if any of such replies and/or interpretation plans are found to be unsatisfactory or if the above property is affected or may be affected by the Mass Rapid Transit system or any roadline or any road or drainage proposal or government acquisition or scheme or intended government acquisition or scheme then this agreement may be rescinded at your option and in such event, I/we shall forthwith refund to you all monies paid by you to me/ us or my/our solicitors but without any interest compensation or deductions whatsoever and thereupon neither party shall then have any claim or demand against the other for costs damages compensation or otherwise ..."

Under clause 4 of the option, it was provided that the sale was subject to the "Singapore Law Society Conditions of Sale 1981."

The solicitors for the plaintiff accordingly applied for and obtained a road interpretation plan which showed that the property was affected by a roadline. The notation on the plan was as follows: "Land required for new road/road improvement." The entire land area of the property was 212.7 sq metres. The area that was affected by the roadline was 29.6 sq. metres, *i.e.* almost 14% of the whole area.

The solicitors for the plaintiff further wrote on September 7, 1987 to the Head, Road Planning and Design Branch, Roads Division of the Public Works Department, who duly confirmed that "the affected area earmarked for road widening would be acquired by the government when the widening of the adjoining roads (Jalan Gembira/Jalan Kemajuan) takes place (irrespective of any development by the owner) or when development takes place on the subject property, whichever is the earlier." This point was re-affirmed on September 24, 1987 by the Head of the Road Planning and Design Branch in response to a further inquiry by the solicitors for the defendants.

The plaintiff, in exercise of the right under clause 8 of the option, rescinded the agreement to purchase and asked for a refund of the 10% deposit. The defendants denied that the plaintiff was entitled to rescind and sought to forfeit the deposit.

The question before the court was whether, based on these facts, the plaintiff was entitled to rescind the agreement and have a refund of the 10% deposit.

Counsel for the plaintiff pointed out that clause 8 was much wider than the usual clause found in many other options which referred only to "satisfactory replies" from the relevant authorities. He contended that under clause 8 the plaintiff was entitled to rescind in any one of these two circumstances:

(i) where any of the replies to the legal requisitions was found to be unsatisfactory. On this basis, the extent of the area affected by the roadline would be pertinent; and

(ii) where the property *is affected or may be affected* by the MRT system *or any roadline* or any road or drainage *proposal* or government acquisition or scheme or *intended* government acquisition or *scheme* (emphasis placed by the plaintiff's counsel). On this basis the extent of the area affected by the roadline was immaterial.

Counsel for the plaintiff argued that the plaintiff was entitled to rescind under both grounds of clause 8.

Counsel for the defendants conceded that taken literally, the clause was wide enough to enable the plaintiff to rescind. However, he made the point (though there was no specific evidence before the court on this) that almost every landed property in Singapore was affected by some roadline or other and if the clause were to be given its literal meaning, no transaction could ever be concluded. The existence of roadlines was something within the contemplation of the parties. The court should give efficacy to the transaction and prevent it from failing based on the presumed intention of the parties. He referred to paragraphs 355 and 358 of *Halsbury's Laws of England*, 4th edn., Vol. 9, in support of this contention.

In recent years, at least four cases have come before the High Court for determination whether

in each instance the existence of a roadline amounted to an unsatisfactory reply enabling the purchaser to rescind – *Tatlien Hardware Pte Ltd.* v. *Tan & Lie & Another*[1]; *Teo Hong Choo* v. *Chin Kiang Industries Pte Ltd*[2]; *Peh Kwee Yong* v. *Sinar Co (Pte) Ltd.*[3]; and *Chu Yik Man* v. *S. Rajagopal & Co and Another.*[4]

In *Tatlien Hardware's* case, the relevant clause was as follows: "The sale will be subject to the purchaser receiving satisfactory answers to all requisitions (whether on title or to the city authorities) and in the event of any of the answers to such requisitions being unsatisfactory, the purchaser may annul the sale in which event the deposit shall be refunded to the purchaser." There the property was affected by a road-widening line which "will be applicable if and when the lot comes for redevelopment." The roadline there did not form part of the Master Plan. The case report did not state the extent to which the property was affected by the roadline. The learned Chief Justice held that as that was a contract for the sale of land and there was no express provision that it was being purchased for redevelopment, there could be no implied term that if the land could be developed, there would be no scheme affecting its redevelopment. The court accordingly held that the purchaser was not entitled to rescind.

In *Teo Hong Choo's* case, where there was a similar clause as in *Tatlien Hardware's* case, and where under the Master Plan one-third of the land was affected by a road-widening line which ran through the building standing on it, Dr A P Rajah J. held that the answers to the legal requisitions were not satisfactory and thus the purchaser was entitled to annul the sale. In contrast, in *Peh Kwee Yong's* case the court refused to declare that the plaintiff was entitled to annul the sale where the area which might be affected by road-widening was "inconsequential" (2.55% *i.e.* 329 sq. feet out of 12,900 sq. feet) despite the fact that the wording used was in subjective terms "... being found unsatisfactory to you (the plaintiff) or your solicitors ..."

Turning to the case of *Chu Yik Man*, where there was a similar term in a contract to sell a two-storey bungalow house at Siglap Road ("property is sold subject to the satisfactory replies to the requisitions ...") and where the area affected by a roadline was just under 10% of the total land area, 94 sq metres out of 943.2 sq metres, Chan Sek Keong J.C. held that the purchaser was entitled to rescind on the ground that the reply to the requisition was not satisfactory notwithstanding the fact that the roadline did not form part of the Master Plan and did not affect the house.

The test to be applied in each case to determine whether a particular reply is satisfactory or not, as these authorities show, is an objective one. Lai J. stated in *Peh Kwee Yong* at p. 262: "In my view only those answers to requisitions which are unsatisfactory to a reasonably determined purchaser could entitle such a purchaser to call off the agreement. And whether a particular answer is unsatisfactory to a reasonably determined purchaser within the meaning of the clause is, in each case, a question of fact." Similar views were expressed by Chan Sek Keong J.C. when he said "the court will have to consider all the relevant factors and applying an objective standard as to what is reasonable in the circumstances of each case."

As stated above, the present property was affected by a roadline to the extent of 14%. That by no stretch of imagination could be considered to be inconsequential. It was even higher than the percentage of land affected in *Chu Yik Man's* case. I would imagine the reason why a person purchases a corner terrace house instead of an intermediate terrace house is because he wants a little more land. The plaintiff would not have obtained what he wanted if 14% of the total land area would sometime in the future be taken away from him for road-widening purposes. I therefore held that the reply and/or interpretation plan were not satisfactory. Thus the plaintiff was entitled to rescind.

Counsel for the defendants had in the course of argument made the point that the road in the instant case was a Category 5 road, whereas Siglap Road in *Chu Yik Man's* case was a Category 4 road and thus should be viewed differently. Roads in Singapore are divided into five categories, with expressways listed as Category 1 and minor roads as Category 5. I did not think this difference in the categorization of Jalan Gembira ought in any way affect the test to be applied in determining whether a reply from the authorities was satisfactory. In *Peh Kwee Yong's* case, where the road was also a Category 5 road, no argument would appear to have been raised by the parties based on that fact.

Even if I should be wrong in the views expressed above that the reply and/or interpretation plan were not satisfactory, there was the further argument of the plaintiff based on the alternative ground. As quoted above, clause 8 not only provid-

ed that the purchaser could rescind "if any of such replies and/or interpretation plans are found to be unsatisfactory", it went on to say that "if the above property is affected or may be affected by the MRT system or any roadline or any road or drainage proposal or government acquisition or scheme or intended government acquisition or scheme" (hereafter referred to as the "second part of clause 8" or "the alternative ground") the purchaser had also the right to rescind.

It seemed to me that the alternative ground must mean more than that "any of such replies and/or interpretation plans are found to be unsatisfactory". Otherwise the parties would not have expressly provided for those specific eventualities and the consequences that would follow. In my view, the second part of clause 8 should be given its plain interpretation. The plaintiff was entitled to rescind if "the property *is affected or may be affected by ... any roadline* or any road ... proposal or government acquisition or scheme or intended government acquisition or scheme ..." (emphasis mine). Although there was a note on the road interpretation plan in the following terms:

> "The information given on the plans forms the best information available on August 14, 87 and is liable to change without notice",

there was nothing, up to the date of hearing, to indicate that the position had changed. While the note on the plan might suggest that the road-widening might not take place at all, that was, in my opinion, of no consequence as the court had to deal with the matter as it stood on the day of hearing – see *Chu Yik Man*. In any event, this was clearly a case where the property "is affected or may be affected by ... *any* roadline".

A more difficult aspect was in determining whether under the alternative ground the right to rescind applied irrespective of the extent to which a property in question was affected by a roadline. In the present case, the answer was clear. For argument, one could ask if in *Peh Kwee Yong's* case (2.55%) there was a clause like the present, would it have made a difference to the outcome. As mentioned above, counsel for the defendants conceded that clause 8 was very wide. He, however, urged the court to imply a term in the contract to the effect that it was not the intention of the parties to so literally construe the clause in the option.

Halsbury's Law of England (4th edn.) Vol. 9 at paragraph 355 states:

> "A term can only be implied if it is necessary in the business sense to give efficacy to the contract; that is if it is such a term that it can confidently be said that if at the time the contract was being negotiated some one had said to the other parties, 'What will happen in such a case' they would both have replied 'Of course, so and so will happen; we did not trouble to say that; it is too clear' ".

In the present case, the parties had expressly provided for the eventuality that occurred. I could not confidently say that in this case if the question of the property being affected by a roadline was raised at the time the agreement was entered into, the parties would have responded in the same manner.

Chitty on Contract – General Principles, 25th edn., Vol. 1 at p. 846 states the following:

> "A term ought not to be implied unless it is in all the instances reasonable. But this does not mean that a term will be implied merely because in all the instances it would be reasonable to do so or because it would improve the contract or make its carrying out more convenient. The touchstone is always necessity and not merely reasonableness."

Having examined clause 8 as a whole, I did not think the question of implied term arose at all. It was simply a question of interpretation and construction. The plain meaning of the second part of clause 8 should be applied. The court should give effect to the intention of the parties as expressed in the option and not re-write it. As Brett L.J. stated in *Re Meredith, ex parte Chick*[4] at p. 739:

> "I am disposed to follow the rule of construction which was laid down by Lord Denman and Baron Parke ... They said that in construing instruments you must have regard, not to the presumed intention of the parties, but to the meaning of the words which they have used."

Even on the criterion of reasonableness, it seemed to me that there was nothing so unreasonable about a purchaser wanting to reserve to himself the right to decide whether to proceed with the purchase or rescind the agreement if the property was affected by a roadline, irrespective of the extent to which the land was so affected. I accordingly also held that the plaintiff was entitled to rescind the agreement based on the alternative ground.

Order accordingly.

Solicitors: *Rajah & Tann; Lee Boon Leong & Co.*